

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

NOVAK AND ELMAGHRABY,

Plaintiffs,

v.

HOME DEPOT U.S.A., INC.,

Defendant.

Civil Action No. 04-4100 (PGS)

ORDER

This matter comes before the Court on Defendant's November 5, 2008 request for leave to file motions to dismiss with prejudice the claims of opt-in plaintiffs who have failed to return a Verified Fact Sheet and certain other opt-in plaintiffs detailed on page 3 of Defendant's November 5, 2008 letter. Plaintiffs have not indicated whether they oppose this request.

WHEREAS this Court is mindful of the Supreme Court's instruction that the sanction of dismissal is "extreme," *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643 (1976); and

WHEREAS this Court is also mindful that, pursuant to its February 13, 2008 Amended Scheduling Order, on or about March 6, 2008, a Notice and Verified Fact Sheet were sent to the selected 500 opt-in plaintiffs that clearly advised that each plaintiff was required to complete and return the Verified Fact Sheet with a postmark dated no later than May 6, 2008; and

WHEREAS after nearly three months had passed since the May 6, 2008 date on which the selected opt-in plaintiffs were required to return responses to the Verified Fact Sheet, and a

significant number of opt-in plaintiffs had failed to do so, Defendant requested leave to file a motion to dismiss the claims of these opt-in plaintiffs, and

WHEREAS by Order dated August 27, 2008, this Court denied Defendant's request and amended its February 13, 2008 Order to provide the opt-in plaintiffs with an additional 45 days to postmark to the third party administrator their responses to the Verified Fact Sheet; and

WHEREAS now nearly two months have passed since the extended deadline by which opt-in plaintiffs were required to return responses to the Verified Fact Sheet, and Defendant avers that 301 out of the 500 selected opt-in plaintiffs have failed to respond. Good cause having been shown, it is hereby

ORDERED that Defendant's request for leave to file motions to dismiss with prejudice the claims of opt-in plaintiffs who have failed to return a Verified Fact Sheet and certain other opt-in plaintiffs detailed on page 3 of Defendant's November 5, 2008 letter is hereby GRANTED.

12/8/08

Peter G. Sheridan
PETER G. SHERIDAN, U.S.D.J.